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SAM'S HOF BRAU, STARZ  
and JET STRIP (erroneously sued  
and served as JET STIP)

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

THE CALIFORNIA COALITION OF  
UNDRESSED PERFORMERS, *et al.*,

Plaintiffs,

vs.

SPEARMINT RHINO, *et al.*,

Defendants.

Case No. CV08-04038 ABC (SSx)

**MEMORANDUM OF POINTS  
AND AUTHORITIES FILED BY  
DEFENDANTS SAM'S HOF  
BRAU, JET STRIP AND STARZ,  
IN SUPPORT OF AMENDED  
MOTION TO DISMISS UNDER  
F.R.Civ.P. 12(b)(6)**

Hearing:  
Date: December 8, 2008  
Time: 10:00 a.m.  
Courtroom 680

**I**

**The Relevant Pleadings**

The Complaint filed herein alleges four causes of action. Moving defendants Sam's Hof Brau, Jet Strip and Starz are named as defendants only in the fourth and final cause of action. That cause of action is based solely upon an asserted violation of the provisions of California's Business and Professions Code, §§17200, et seq.

## II

### The Relevant Law

However, the Complaint has no allegations of any plaintiff to have ever been in the employ of any of these defendants. Such a pleading, on its face, fails to state any cause of action under Business and Professions Code §§ 17200, et seq.

Specifically, BPC § 17204 provides the exclusive remedies available for any violations of any Business and Professions Code violations under §§ 17200, et seq. In pertinent part, that section states:

**“§§ 17204.**

“Actions for *any* relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city having a population in excess of 750,000, or by a city attorney in any city and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation, or association, **or by any person who has suffered injury in fact and has lost money or property as a result of the unfair competition.**” (Emphasis added.)

It is clear from the above that private citizens may not sue for any type of relief under the Business and Professions Code unless they have personally “suffered injury in fact” and have “lost money or property” as a result of the defendant’s asserted unfair competition.

1 Since no plaintiff alleges that she has suffered any personal loss of money or  
2 property in connection with the operation of these defendants' businesses, the  
3 Complaint fails to state a claim for relief against these defendants on its face and  
4 should be dismissed under F.R. Civ.P. 12(b)(6).  
5

6 Wholly apart from the fact that no cause of action has been stated under any  
7 applicable provision of the California Business and Professions Code, the Complaint  
8 also fails to state a cause of action against these defendants because no plaintiff has  
9 alleged a case or controversy against any of these defendants and, accordingly, the  
10 Complaint is additionally defective for failing to satisfy the minimal federal  
11 standards to satisfy the standing requirements of Article III of the United States  
12 Constitution.  
13  
14

15  
16 Respectfully submitted,

17  
18 Dated: November 3, 2008

19 John H. Weston  
20 G. Randall Garrou  
21 WESTON, GARROU, WALTERS & MOONEY

22 By: s/  
23 G. Randall Garrou  
24 Attorneys for Defendants SAM'S HOF  
25 BRAU, STARZ, and JET STRIP  
26 (erroneously sued and served as JET STIP)  
27  
28

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 12121 Wilshire Boulevard, Suite 900, Los Angeles, CA 90025.

On today's date, I served the document described as "**MEMORANDUM OF POINTS AND AUTHORITIES FILED BY DEFENDANTS SAM'S HOF BRAU, JET STRIP AND STARZ, IN SUPPORT OF AMENDED MOTION TO DISMISS UNDER F.R.Civ.P. 12(b)(6)**" on the interested party(s) in this action, as follows:

Roger Jon Diamond, Esq.,  
DIAMOND LAW OFFICES  
2115 Main Street  
Santa Monica, CA 90405


**XX (by U.S. Mail)** By placing a true copy thereof enclosed in a sealed envelope, with postage fully paid, addressed as per the above listed recipient, for collection and mailing at 12121 Wilshire Boulevard, Los Angeles, CA 90025 following ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, CA in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

**— (By Personal Service)** I delivered a true copy to addressee.

**— (By FedEx)** I placed the above-entitled document(s) in a FedEx (Overnight) envelope/pouch as addressed above, with delivery fees paid or provided for and deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf.

**XX (State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 3, 2008, at Los Angeles, California.

  
Judy Sue Kushner